

# House File 629 - Introduced

HOUSE FILE 629

BY PEARSON

## A BILL FOR

1 An Act relating to unlawful aliens and law enforcement and  
2 providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   80.41   Unlawful alien enforcement  
2 fund.

3     1. An unlawful alien enforcement fund is created in the  
4 state treasury under the control of the department, subject to  
5 appropriation by the general assembly. The fund shall consist  
6 of civil penalties collected and deposited into the fund under  
7 section 823.7, fines collected and deposited into the fund  
8 under section 734.5, and moneys appropriated by the general  
9 assembly to the fund. Moneys in the fund shall be used by the  
10 department for enforcement of laws relating to unlawful aliens  
11 and for incarceration costs for unlawful aliens.

12    2. Notwithstanding section 12C.7, subsection 2, interest or  
13 earnings on moneys credited to the unlawful alien enforcement  
14 fund shall be credited to the unlawful alien enforcement fund.  
15 Notwithstanding section 8.33, moneys credited to the unlawful  
16 alien enforcement fund at the end of a fiscal year shall not  
17 revert to any other fund but shall remain in the fund for  
18 purposes of the fund.

19    Sec. 2. NEW SECTION.   93.1   Definitions.

20    As used in this chapter, unless the context otherwise  
21 requires:

22    1. "Agency" means an agency, department, board, or  
23 commission of this state or a political subdivision that issues  
24 a license for purposes of operating a business in this state.

25    2. "Economic development incentive" means a grant, loan, or  
26 performance-based incentive awarded by a government entity of  
27 this state. "Economic development incentive" does not include a  
28 tax credit or tax incentive program.

29    3. "Employ" means hiring or continuing to employ an  
30 individual to perform services.

31    4. "Employee" means an individual who provides services  
32 or labor for an employer in this state for wages or other  
33 remuneration. "Employee" does not include an independent  
34 contractor.

35    5. "Employer" means a person that transacts business in

1 this state, that has a license issued by an agency in this  
 2 state, and that employs one or more employees in this state.  
 3 "*Employer*" includes this state, a political subdivision of  
 4 this state, and a self-employed individual. In the case of  
 5 an independent contractor, "*employer*" means the independent  
 6 contractor and does not mean the person or organization that  
 7 uses the contract labor.

8 6. "*E-verify program*" means the employment verification  
 9 pilot program as jointly administered by the United States  
 10 department of homeland security and the United States social  
 11 security administration or any successor program.

12 7. "*Government entity*" means this state or a political  
 13 subdivision of this state that receives and uses tax revenues.

14 8. "*Independent contractor*" means a person that carries on  
 15 an independent business, that contracts to do a piece of work  
 16 according to the person's own means and methods and that is  
 17 subject to control only as to results. Whether a person is an  
 18 independent contractor is determined on a case-by-case basis  
 19 through various factors, including whether the person does any  
 20 of the following:

21 a. Supplies tools or materials.

22 b. Makes services available to the general public.

23 c. Works or may work for a number of clients at the same  
 24 time.

25 d. Has an opportunity for profit or loss as a result of  
 26 labor or service provided.

27 e. Invests in the facilities for work.

28 f. Directs the order or sequence in which the work is  
 29 completed.

30 g. Determines the hours when the work is completed.

31 9. "*Knowingly employ an unauthorized alien*" means the  
 32 actions described in 8 U.S.C. § 1324a, and shall be interpreted  
 33 consistently with 8 U.S.C. § 1324a and any applicable federal  
 34 regulations.

35 10. "*License*" means an agency permit, certificate, approval,

1 registration, charter, or similar form of authorization, other  
2 than a professional license, that is required by law and that  
3 is issued by an agency for the purposes of operating a business  
4 in this state, including by a foreign corporation.

5 11. "*Social security number verification service*" means  
6 the program administered by the United States social security  
7 administration or any successor program.

8 12. "*Unauthorized alien*" means an alien who does not have  
9 the legal right or authorization under federal law to work in  
10 the United States as described in 8 U.S.C. § 1324a(h)(3).

11 Sec. 3. NEW SECTION. 93.2 **Knowingly or intentionally**  
12 **employing unauthorized aliens.**

13 1. *Knowingly or intentionally employing unauthorized aliens*  
14 *prohibited.* An employer shall not knowingly or intentionally  
15 employ an unauthorized alien. If an employer uses a contract,  
16 subcontract, or other independent contractor agreement to  
17 obtain the labor of an alien in this state, and the employer  
18 knowingly or intentionally contracts with an unauthorized  
19 alien or with a person who employs or contracts with an  
20 unauthorized alien to perform the labor, the employer violates  
21 this subsection.

22 2. *Complaints.* a. The attorney general shall prescribe  
23 a complaint form for a person to allege a violation of  
24 subsection 1. The complainant shall not be required to list  
25 the complainant's social security number on the complaint form  
26 or to have the complaint form notarized. Complaints shall  
27 be submitted to the attorney general or a county attorney.  
28 A complaint that is submitted to a county attorney shall be  
29 submitted to the county attorney in the county in which the  
30 alleged unauthorized alien is or was employed by the employer.  
31 This subsection shall not be construed to prohibit the filing  
32 of anonymous complaints that are not submitted on a prescribed  
33 complaint form.

34 b. On receipt of a complaint on a prescribed complaint form  
35 that an employer allegedly knowingly or intentionally employs

1 or employed an unauthorized alien, the attorney general or  
2 county attorney shall investigate whether the employer has  
3 violated subsection 1. If a complaint is received but is not  
4 submitted on a prescribed complaint form, the attorney general  
5 or county attorney may investigate whether the employer has  
6 violated subsection 1.

7     *c.* The attorney general or county attorney shall not  
8 investigate complaints that are based solely on race, color,  
9 or national origin. The county sheriff or any other local law  
10 enforcement agency may assist in investigating a complaint.  
11 When investigating a complaint, the attorney general or county  
12 attorney shall verify the work authorization of the alleged  
13 unauthorized alien with the federal government pursuant to 8  
14 U.S.C. § 1373(c). A state, county, or local official shall not  
15 attempt to independently make a final determination on whether  
16 an alien is authorized to work in the United States.

17     *d.* A person who knowingly files a false and frivolous  
18 complaint under this subsection is guilty of a simple  
19 misdemeanor.

20     3. *Required notifications.* *a.* If, after an investigation,  
21 the attorney general or county attorney determines that the  
22 complaint is not false and frivolous, the attorney general or  
23 county attorney shall notify the following entities of the  
24 unauthorized alien:

25         (1) The United States immigration and customs enforcement.

26         (2) The local law enforcement agency.

27     *b.* The attorney general shall notify the appropriate county  
28 attorney to bring an action pursuant to subsection 4 if the  
29 complaint was originally filed with the attorney general.

30     4. *Court action required.* An action for a violation of  
31 subsection 1 shall be brought against the employer by the  
32 county attorney in the district court of the county where the  
33 unauthorized alien employee is or was employed by the employer.  
34 The district court shall expedite the action, including  
35 assigning a hearing at the earliest practicable date.

1     5. *Court order — first violation.* On a finding of a first  
2 violation as described in subsection 7, the court shall require  
3 by order all of the following:

4     *a.* The employer shall terminate the employment of all  
5 unauthorized aliens.

6     *b.* (1) For a knowing violation, the employer shall be  
7 subject to a three-year probationary period for the business  
8 location where the unauthorized alien performed work.

9     (2) For an intentional violation, the employer shall be  
10 subject to a five-year probationary period for the business  
11 location where the unauthorized alien performed work.

12     (3) During the probationary period, the employer shall file  
13 quarterly reports on the form prescribed in section 252G.3 with  
14 the county attorney for each new employee who is hired by the  
15 employer at the business location where the unauthorized alien  
16 performed work.

17     *c.* The employer to file a signed sworn affidavit with the  
18 county attorney within three business days after the order  
19 is issued. The affidavit shall state that the employer has  
20 terminated the employment of all unauthorized aliens in this  
21 state and that the employer will not knowingly or intentionally  
22 employ an unauthorized alien in this state.

23     (1) The court shall order the appropriate agencies to  
24 suspend all licenses that are held by the employer if the  
25 employer fails to file a signed sworn affidavit with the county  
26 attorney within three business days after the order is issued.  
27 All licenses that are suspended shall remain suspended until  
28 the employer files a signed sworn affidavit with the county  
29 attorney. Upon filing of the affidavit, the suspended licenses  
30 shall be reinstated immediately by the appropriate agencies.

31     (2) Licenses that are subject to suspension under this  
32 paragraph "c" are all licenses that are held by the employer  
33 specific to the business location where the unauthorized alien  
34 performed work. If the employer does not hold a license  
35 specific to the business location where the unauthorized alien

1 performed work, but a license is necessary to operate the  
2 employer's business in general, the licenses that are subject  
3 to suspension under this paragraph "c" are all licenses that  
4 are held by the employer at the employer's primary place of  
5 business. On receipt of the court's order, the appropriate  
6 agencies shall suspend the licenses according to the court's  
7 order. The court shall send a copy of the court's order to the  
8 attorney general and the attorney general shall maintain the  
9 copy pursuant to subsection 8.

10 (3) For a knowing violation, the court may order the  
11 appropriate agencies to suspend all licenses described in this  
12 paragraph "c" that are held by the employer for not more than  
13 ten business days. For an intentional violation, the court  
14 shall order the appropriate agencies to suspend all licenses  
15 described in this paragraph "c" that are held by the employer  
16 for a minimum of ten business days. The court shall base its  
17 decision to suspend under this subparagraph on any evidence or  
18 information submitted to it during the action for a violation  
19 of subsection 1 and shall consider the following factors, if  
20 relevant:

21 (a) The number of unauthorized aliens employed by the  
22 employer.

23 (b) Any prior misconduct by the employer.

24 (c) The degree of harm resulting from the violation.

25 (d) Whether the employer made good faith efforts to comply  
26 with any applicable requirements.

27 (e) The duration of the violation.

28 (f) The role of the directors, officers, or principals of  
29 the employer in the violation.

30 (g) Any other factors the court deems appropriate.

31 6. *Court order — second violation.* For a second violation,  
32 as described in subsection 7, the court shall order the  
33 appropriate agencies to permanently revoke all licenses that  
34 are held by the employer specific to the business location  
35 where the unauthorized alien performed work. If the employer

1 does not hold a license specific to the business location  
2 where the unauthorized alien performed work, but a license  
3 is necessary to operate the employer's business in general,  
4 the court shall order the appropriate agencies to permanently  
5 revoke all licenses that are held by the employer at the  
6 employer's primary place of business. On receipt of the order,  
7 the appropriate agencies shall immediately revoke the licenses.

8     7. *Violations defined.* a. The violation shall be  
9 considered a first violation by an employer at a business  
10 location if the violation did not occur during a probationary  
11 period ordered by the court under subsection 5, paragraph "b",  
12 for that employer's business location.

13     b. The violation shall be considered a second violation by  
14 an employer at a business location if the violation occurred  
15 during a probationary period ordered by the court under  
16 subsection 5, paragraph "b", for that employer's business  
17 location.

18     8. *Attorney general database.* The attorney general shall  
19 maintain copies of court orders that are received pursuant to  
20 subsection 5, paragraph "c", and shall maintain a database  
21 of the employers and business locations that have a first  
22 violation of subsection 1 and make the court orders available  
23 on the attorney general's internet site.

24     9. *Federal determination governs.* In determining whether  
25 an employee is an unauthorized alien, the court shall consider  
26 only the federal government's determination pursuant to 8  
27 U.S.C. § 1373(c). The federal government's determination  
28 creates a rebuttable presumption of the employee's lawful  
29 status. The court may take judicial notice of the federal  
30 government's determination and may request the federal  
31 government to provide automated or testimonial verification  
32 pursuant to 8 U.S.C. § 1373(c).

33     10. *E-verify rebuttable presumption.* For the purposes of  
34 this section, proof of verifying the employment authorization  
35 of an employee through the e-verify program creates a



1 rebuttable presumption that an employer did not knowingly or  
2 intentionally employ an unauthorized alien.

3 11. *Good faith compliance.* For the purposes of this  
4 section, an employer that establishes that it has complied  
5 in good faith with the requirements of 8 U.S.C. § 1324a(b)  
6 establishes an affirmative defense that the employer did not  
7 knowingly or intentionally employ an unauthorized alien. An  
8 employer is considered to have complied with the requirements  
9 of 8 U.S.C. § 1324a(b), notwithstanding an isolated, sporadic,  
10 or accidental technical or procedural failure to meet the  
11 requirements, if there is a good faith attempt to comply with  
12 the requirements.

13 12. *Entrapment as affirmative defense. a.* It is an  
14 affirmative defense to a violation of subsection 1 that the  
15 employer was entrapped. To claim entrapment, the employer  
16 must admit by the employer's testimony or other evidence the  
17 substantial elements of the violation. An employer who asserts  
18 an entrapment defense has the burden of proving all of the  
19 following by a preponderance of the evidence:

20 (1) The idea of committing the violation started with law  
21 enforcement officers or their agents rather than with the  
22 employer.

23 (2) The law enforcement officers or their agents urged and  
24 induced the employer to commit the violation.

25 (3) The employer was not predisposed to commit the violation  
26 before the law enforcement officers or their agents urged and  
27 induced the employer to commit the violation.

28 *b.* An employer does not establish entrapment if the employer  
29 was predisposed to violate subsection 1 and the law enforcement  
30 officers or their agents merely provided the employer with an  
31 opportunity to commit the violation. It is not entrapment for  
32 law enforcement officers or their agents merely to use a ruse  
33 or to conceal their identity. The conduct of law enforcement  
34 officers and their agents may be considered in determining if  
35 an employer has proven entrapment.

1     Sec. 4. NEW SECTION.   **93.3 E-verify program — employer**  
2 **participation.**

3     1. An employer, after hiring an employee, shall verify the  
4 employment eligibility of the employee through the e-verify  
5 program and shall keep a record of the verification for the  
6 duration of the employee's employment or at least three years,  
7 whichever is longer.

8     2. In addition to any other requirement for an employer to  
9 receive an economic development incentive from a government  
10 entity, the employer shall register with and participate  
11 in the e-verify program. Before receiving the economic  
12 development incentive, the employer shall provide proof to the  
13 government entity that the employer is registered with and  
14 is participating in the e-verify program. If the government  
15 entity determines that the employer is not complying with this  
16 subsection, the government entity shall notify the employer  
17 by certified mail of the government entity's determination  
18 of noncompliance and the employer's right to appeal the  
19 determination. On a final determination of noncompliance,  
20 the employer shall repay all moneys received as an economic  
21 development incentive to the government entity within thirty  
22 days of the final determination.

23     3. Every three months, the attorney general shall request  
24 from the United States department of homeland security a list  
25 of employers from this state that are registered with the  
26 e-verify program. On receipt of the list of employers, the  
27 attorney general shall make the list available on the attorney  
28 general's internet site.

29     Sec. 5. NEW SECTION.   **321.518 Unlawful aliens — vehicle**  
30 **immobilization or impoundment.**

31     1. For purposes of this section:

32     a. "*Immobilization*" means the installation of a device in  
33 a motor vehicle that completely prevents a motor vehicle from  
34 being operated, or the installation of an ignition interlock  
35 device of a type approved by the commissioner of public safety.

1     *b. "Impoundment"* means the process of seizure and  
2 confinement within an enclosed area of a motor vehicle, for the  
3 purpose of restricting access to the vehicle.

4     2. A peace officer shall cause the removal and either  
5 immobilization or impoundment of a vehicle if the peace officer  
6 determines that a person is driving the vehicle while any of  
7 the following applies:

8     *a.* In furtherance of the illegal presence of an alien in  
9 the United States and in violation of a criminal offense, the  
10 person is transporting or moving or attempting to transport or  
11 move an alien in this state in a vehicle if the person knows or  
12 recklessly disregards the fact that the alien has come to, has  
13 entered, or remains in the United States in violation of law.

14     *b.* The person is concealing, harboring, or shielding  
15 or attempting to conceal, harbor, or shield from detection  
16 an alien in this state in a vehicle if the person knows or  
17 recklessly disregards the fact that the alien has come to,  
18 entered, or remains in the United States in violation of law.

19     Sec. 6. NEW SECTION. 710B.1 **Definitions.**

20     For the purposes of this chapter:

21     1. "*Drop house*" means property or real property that is used  
22 to facilitate smuggling of human beings.

23     2. "*Family member*" means the person's parent, grandparent,  
24 sibling, or any other person who is related to the person by  
25 consanguinity or affinity to the second degree.

26     3. "*Procurement of transportation*" means any participation  
27 in or facilitation of transportation and includes all of the  
28 following:

29     *a.* Providing services that facilitate transportation,  
30 including travel arrangement services or money transmission  
31 services.

32     *b.* Providing property that facilitates transportation,  
33 including all of the following:

34         (1) A weapon.

35         (2) A vehicle or other means of transportation.

1 (3) False identification information.

2 (4) Selling, leasing, renting, or otherwise making  
3 available a drop house.

4 4. "*Trafficking of human beings*" means the transportation,  
5 procurement of transportation, or use of property or real  
6 property by a person or an entity that knows or has reason  
7 to know that the person or persons transported or to be  
8 transported are not United States citizens, permanent resident  
9 aliens, or persons otherwise lawfully in this state, or have  
10 attempted to enter, entered, or remained in the United States  
11 in violation of law.

12 Sec. 7. NEW SECTION. 710B.2 Trafficking of human beings  
13 unlawful — penalties.

14 1. A person shall not intentionally engage in the  
15 trafficking of human beings for profit or commercial purpose.

16 2. A violation of subsection 1 is classified as follows:

17 a. A class "C" felony if the human being who is trafficked  
18 is under eighteen years of age and is not accompanied by  
19 a family member over eighteen years of age or the offense  
20 involved the use of a dangerous weapon as defined in section  
21 702.7.

22 b. A class "D" felony if the offense involves the use or  
23 threatened use of deadly force and the person is not eligible  
24 for suspension of sentence, probation, pardon, or release from  
25 confinement on any other basis except any of the following:

26 (1) As authorized by chapter 905 and sections 904.703,  
27 904.910, and 906.4 for work release only.

28 (2) Until the sentence imposed by the court has been served.

29 (3) The person is eligible for release pursuant to section  
30 903A.2.

31 (4) The sentence is commuted pursuant to section 914.1.

32 c. An aggravated misdemeanor for any other violation.

33 Sec. 8. NEW SECTION. 710B.3 Traffic stops.

34 Notwithstanding any other provision of law, in the  
35 enforcement of this chapter, a peace officer may lawfully stop

1 a person who is operating a motor vehicle if the officer has  
2 reasonable suspicion to believe the person is in violation of a  
3 civil traffic law.

4 Sec. 9. Section 715A.2A, subsection 1, Code 2011, is amended  
5 to read as follows:

6 1. An employer is subject to the civil penalty in this  
7 section if the employer does ~~either~~ any of the following:

8 a. Hires a person when the employer or an agent or employee  
9 of the employer knows that the document evidencing the person's  
10 authorized stay or employment in the United States is in  
11 violation of section 715A.2, subsection 2, paragraph "a",  
12 subparagraph (4), ~~or knows that the person is not authorized to~~  
13 ~~be employed in the United States.~~

14 b. Continues to employ a person when the employer or an  
15 agent or employee of the employer knows that the document  
16 evidencing the person's authorized stay or employment in the  
17 United States is in violation of section 715A.2, subsection 2,  
18 paragraph "a", subparagraph (4), ~~or knows that the person is not~~  
19 ~~authorized to be employed in the United States.~~

20 Sec. 10. NEW SECTION. 734.1 Failure to carry alien  
21 identification documentation.

22 In addition to any violation of federal law, a person  
23 is guilty of willful failure to complete or carry an alien  
24 registration document if the person is in violation of 8 U.S.C.  
25 § 1304(e) or 8 U.S.C. § 1306(a).

26 Sec. 11. NEW SECTION. 734.2 Determination of immigration  
27 status.

28 In the enforcement of this chapter, an alien's immigration  
29 status may be determined by any of the following:

30 1. A law enforcement officer who is authorized by  
31 the federal government to verify or ascertain an alien's  
32 immigration status.

33 2. The United States immigration and customs enforcement or  
34 the United States customs and border protection pursuant to 8  
35 U.S.C. § 1373(c).

1     Sec. 12. NEW SECTION.   **734.3 Eligibility for release.**

2     A person who is sentenced pursuant to this chapter is  
3 not eligible for suspension of sentence, probation, pardon,  
4 commutation of sentence, or release from confinement on any  
5 basis except any of the following:

6     1. As authorized by chapter 905 and sections 904.703,  
7 904.910, and 906.4 for work release only.

8     2. Until the sentence imposed by the court has been served.

9     3. The person is eligible for release pursuant to section  
10 903A.2.

11    Sec. 13. NEW SECTION.   **734.4 Payment of costs and**  
12 **assessment.**

13    In addition to any other penalty prescribed by law, the court  
14 shall order the person to pay the cost of incarceration and an  
15 additional assessment of a fine in the following amounts:

16    1. At least five hundred dollars for a first violation.

17    2. Twice the amount specified in subsection 1 if the person  
18 was previously subject to an assessment pursuant to this  
19 section.

20    Sec. 14. NEW SECTION.   **734.5 Remittance of fines.**

21    A court shall collect the fine prescribed in section 734.4  
22 and remit the fine to the treasurer of state for deposit in the  
23 unlawful alien enforcement fund created in section 80.41.

24    Sec. 15. NEW SECTION.   **734.6 Inapplicability.**

25    This chapter does not apply to a person who maintains  
26 authorization from the federal government to remain in the  
27 United States.

28    Sec. 16. NEW SECTION.   **734.7 Admissibility of records.**

29    A record that relates to the immigration status of a  
30 person is admissible in any court without further foundation  
31 or testimony from a custodian of records if the record is  
32 certified as authentic by the government agency that is  
33 responsible for maintaining the record.

34    Sec. 17. NEW SECTION.   **734.8 Penalty.**

35    A violation of this chapter is classified as follows:

1     1. A class "D" felony if the person violates this section  
2 while in possession of any of the following:

3     a. A controlled substance, counterfeit substance, or  
4 simulated controlled substance as defined in section 124.101.

5     b. A dangerous weapon as defined in section 702.7.

6     c. Property that is used for the purpose of committing  
7 or attempting to commit an act of terrorism as proscribed in  
8 section 708A.2 or for providing material support or resources  
9 to a person committing or attempting to commit terrorism as  
10 proscribed in section 708A.4.

11    2. An aggravated misdemeanor if any of the following  
12 applies:

13    a. The person is convicted of a second or subsequent  
14 violation of this chapter.

15    b. Within sixty months before the violation, the person  
16 has been removed from the United States pursuant to 8 U.S.C.  
17 § 1229a or has accepted a voluntary removal from the United  
18 States pursuant to 8 U.S.C. § 1229c.

19    3. A serious misdemeanor for any other violation.

20    Sec. 18. NEW SECTION. 735.1 **Employment of unlawful aliens**  
21 **— penalty.**

22    1. For the purposes of this section:

23    a. "*Solicit*" means verbal or nonverbal communication by a  
24 gesture or a nod that would indicate to a reasonable person  
25 that a person is willing to be employed.

26    b. "*Unauthorized alien*" means an alien who does not have the  
27 legal right or authorization under federal law to work in the  
28 United States as described in 8 U.S.C. § 1324a(h)(3).

29    2. An occupant of a motor vehicle that is stopped on a  
30 street, roadway, or highway shall not attempt to hire or hire  
31 and pick up passengers for work at a different location if the  
32 motor vehicle blocks or impedes the normal movement of traffic.

33    3. A person shall not enter a motor vehicle that is stopped  
34 on a street, roadway, or highway in order to be hired by an  
35 occupant of the motor vehicle and to be transported to work at

1 a different location if the motor vehicle blocks or impedes the  
2 normal movement of traffic.

3 4. A person who is unlawfully present in the United States  
4 and who is an unauthorized alien shall not knowingly apply for  
5 work, solicit work in a public place, or perform work as an  
6 employee or independent contractor in this state.

7 5. A violation of this section is a serious misdemeanor.

8 Sec. 19. NEW SECTION. 735.2 Transportation, concealment,  
9 and inducement of unlawful aliens — penalty.

10 1. For the purposes of this section:

11 a. "*Immobilized*" means the installation of a device in a  
12 motor vehicle that completely prevents a motor vehicle from  
13 being operated, or the installation of an ignition interlock  
14 device of a type approved by the commissioner of public safety.

15 b. "*Impoundment*" means the process of seizure and  
16 confinement within an enclosed area of a motor vehicle, for the  
17 purpose of restricting access to the vehicle.

18 2. A person who commits a criminal offense also commits  
19 another criminal offense if the person does any of the  
20 following:

21 a. Transports or moves or attempts to transport or move an  
22 alien in this state, in furtherance of the illegal presence of  
23 the alien in the United States, in a means of transportation  
24 if the person knows or recklessly disregards the fact that the  
25 alien has come to, has entered, or remains in the United States  
26 in violation of law.

27 b. Conceals, harbors, or shields or attempts to conceal,  
28 harbor, or shield an alien from detection in any place in this  
29 state, including any building or any means of transportation,  
30 if the person knows or recklessly disregards the fact that the  
31 alien has come to, has entered, or remains in the United States  
32 in violation of law.

33 c. Encourages or induces an alien to enter or reside in this  
34 state if the person knows or recklessly disregards the fact  
35 that the alien entering or residing in this state is or will be



1 in violation of law.

2 3. A means of transportation that is used in the commission  
3 of a violation of this section is subject to mandatory vehicle  
4 immobilization or impoundment.

5 4. This section does not apply to a department of human  
6 services' worker acting in the worker's official capacity or a  
7 person who is acting in the capacity of a first responder, an  
8 ambulance attendant, or an emergency medical care provider and  
9 who is transporting or moving an alien in this state.

10 5. A person who violates this section is guilty of a  
11 serious misdemeanor, except that a violation of this section  
12 that involves ten or more unauthorized aliens is an aggravated  
13 misdemeanor and is punishable by confinement for no more than  
14 two years and a fine of at least one thousand dollars for each  
15 alien who is involved.

16 Sec. 20. Section 804.7, Code 2011, is amended by adding the  
17 following new subsection:

18 NEW SUBSECTION. 7. If the peace officer has reasonable  
19 grounds for believing that the person to be arrested has  
20 committed a public offense that makes the person removable from  
21 the United States.

22 Sec. 21. NEW SECTION. 823.1 **Interference with enforcement**  
23 **prohibited.**

24 An official or agency of this state or a political  
25 subdivision of this state shall not limit or restrict the  
26 enforcement of federal immigration laws to less than the full  
27 extent permitted by federal law.

28 Sec. 22. NEW SECTION. 823.2 **Determination of immigration**  
29 **status.**

30 For a lawful contact made by a law enforcement official or  
31 a law enforcement agency of this state or a law enforcement  
32 official or a law enforcement agency of a political subdivision  
33 of this state where reasonable suspicion exists that a person  
34 is an alien who is unlawfully present in the United States,  
35 a reasonable attempt shall be made, when practicable, to

1 determine the immigration status of the person, except if the  
 2 determination may hinder or obstruct an investigation. A  
 3 person who is arrested shall have the person's immigration  
 4 status determined before the person is released. The person's  
 5 immigration status shall be verified with the federal  
 6 government pursuant to 8 U.S.C. § 1373(c). A law enforcement  
 7 official or agency of this state or a political subdivision of  
 8 this state shall not solely consider race, color, or national  
 9 origin in implementing the requirements of this section  
 10 except to the extent permitted by the United States or Iowa  
 11 constitution. A person is presumed to not be an alien who is  
 12 unlawfully present in the United States if the person provides  
 13 to the law enforcement officer or agency any of the following:  
 14 1. A valid Iowa driver's license.  
 15 2. A valid Iowa nonoperator's identification card.  
 16 3. A valid tribal enrollment card or other form of tribal  
 17 identification.  
 18 4. A valid United States, state, or local government-issued  
 19 identification if the government entity issuing the document  
 20 requires proof of legal presence in the United States before  
 21 issuance.

22 Sec. 23. NEW SECTION. 823.3 Notification of federal  
 23 authority.

24 If an alien who is unlawfully present in the United States is  
 25 convicted of a violation of state or local law, on discharge  
 26 from imprisonment or on the assessment of a monetary obligation  
 27 that is imposed, an official or agency of this state or a  
 28 political subdivision of this state shall immediately notify  
 29 the United States immigration and customs enforcement or the  
 30 United States customs and border protection.

31 Sec. 24. NEW SECTION. 823.4 Transportation of unlawful  
 32 aliens.

33 Notwithstanding any other provision of law, a law  
 34 enforcement agency may securely transport an alien for whom the  
 35 agency has received verification that the alien is unlawfully

1 present in the United States and who is in the agency's custody  
 2 to a federal facility in this state or to any other point of  
 3 transfer into federal custody that is outside the jurisdiction  
 4 of the law enforcement agency. A law enforcement agency shall  
 5 obtain judicial authorization before securely transporting an  
 6 alien who is unlawfully present in the United States to a point  
 7 of transfer that is outside of this state.

8     Sec. 25. NEW SECTION. 823.5 Use of information for official  
 9 purpose.

10     Except as provided in federal law, an official or agency  
 11 of this state or a political subdivision of this state  
 12 shall not be prohibited or in any way be restricted from  
 13 sending, receiving, or maintaining information relating to  
 14 the immigration status, lawful or unlawful, of a person or  
 15 exchanging that information with any other federal, state, or  
 16 local governmental entity for any of the following official  
 17 purposes:

18     1. Determining eligibility for a public benefit, service,  
 19 or license provided by a federal, state, local, or other  
 20 political subdivision of this state.

21     2. Verifying a claim of residence or domicile if  
 22 determination of residence or domicile is required under the  
 23 laws of this state or a judicial order issued pursuant to a  
 24 civil or criminal proceeding in this state.

25     3. If the person is an alien, determining whether the person  
 26 is in compliance with the federal registration laws prescribed  
 27 by Tit. II, Ch. 7 of the federal Immigration and Nationality  
 28 Act.

29     4. Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

30     Sec. 26. NEW SECTION. 823.6 Civil suit and penalty.

31     A person who is a legal resident of this state may bring an  
 32 action in district court to challenge an official or agency of  
 33 this state or a political subdivision of this state that adopts  
 34 or implements a policy or practice that limits or restricts  
 35 the enforcement of federal immigration laws to less than the

1 full extent permitted by federal law. If there is a judicial  
 2 finding that an entity has violated this chapter, the court  
 3 shall order that the entity pay a civil penalty of not less  
 4 than one thousand dollars and not more than five thousand  
 5 dollars for each day that the policy has remained in effect  
 6 after the filing of an action pursuant to this section.

7 Sec. 27. NEW SECTION. **823.7 Remittance of civil penalty.**

8 A court shall collect the civil penalty prescribed in  
 9 section 823.6 and remit the civil penalty to the treasurer  
 10 of state for deposit in the unlawful alien enforcement fund  
 11 created in section 80.41.

12 Sec. 28. NEW SECTION. **823.8 Court costs and attorney fees.**

13 The court may award court costs and reasonable attorney  
 14 fees to a person or an official or agency of this state or  
 15 a political subdivision of this state that prevails by an  
 16 adjudication on the merits in a proceeding brought pursuant to  
 17 section 823.6.

18 Sec. 29. NEW SECTION. **823.9 Indemnification.**

19 A law enforcement officer shall be indemnified by the  
 20 officer's agency against reasonable costs and expenses,  
 21 including attorney fees, incurred by the officer in connection  
 22 with an action, suit, or proceeding brought pursuant to this  
 23 chapter in which the officer may be a defendant by reason  
 24 of the officer being or having been a member of the law  
 25 enforcement agency, except in relation to matters in which the  
 26 officer is adjudged to have acted in bad faith.

27 Sec. 30. NEW SECTION. **823.10 Consistency with existing law.**

28 This chapter shall be implemented and administered in a  
 29 manner consistent with federal laws regulating immigration,  
 30 protecting the civil rights of all persons, and respecting the  
 31 privileges and immunities of United States citizens.

32 Sec. 31. **IMPLEMENTATION OF ACT.**

33 1. This Act shall be implemented and administered in a  
 34 manner consistent with federal laws regulating immigration,  
 35 protecting the civil rights of all persons, and respecting the

1 privileges and immunities of United States citizens.

2 2. Section 25B.2, subsection 3, shall not apply to this Act.

3 EXPLANATION

4 This bill relates to unlawful aliens and law enforcement in  
5 Iowa.

6 UNLAWFUL ALIEN IMMIGRATION FUND. The bill creates an  
7 unlawful alien enforcement fund in the state treasury under  
8 the control of the department of public safety, subject to  
9 appropriation by the general assembly. The bill provides that  
10 the fund will consist of certain penalties and fines, as well  
11 as moneys appropriated by the general assembly. The bill  
12 requires the moneys in the fund to be used for enforcement  
13 of laws relating to unlawful aliens and for county jail  
14 reimbursement costs for unlawful aliens. Interest or earnings  
15 on moneys credited to the unlawful alien enforcement fund will  
16 be credited to the unlawful alien enforcement fund. Moneys  
17 credited to the unlawful alien enforcement fund at the end of a  
18 fiscal year will not revert to any other fund but will remain  
19 in the unlawful alien enforcement fund.

20 EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED. The bill  
21 provides definitions relating to employment of unauthorized  
22 aliens. The bill prohibits employers from knowingly or  
23 intentionally employing unauthorized aliens. The bill  
24 directs the attorney general to prescribe a complaint form for  
25 alleged violations of the prohibition. The bill provides that  
26 complaints may be submitted to the attorney general or the  
27 county attorney in the county in which the alleged unauthorized  
28 alien is or was employed by the employer. The bill directs the  
29 attorney general or county attorney to investigate complaints  
30 they receive, and to verify the work authorization of an  
31 alleged unauthorized alien with the federal government. The  
32 bill prohibits the attorney general or county attorney from  
33 investigating complaints that are based solely on race, color,  
34 or national origin. The bill allows a county sheriff or other  
35 local law enforcement to assist in an investigation. The

1 bill provides that a person who knowingly files a false and  
2 frivolous complaint is guilty of a simple misdemeanor, which is  
3 punishable by confinement for no more than 30 days or a fine of  
4 at least \$65 but not more than \$625 or by both.

5 The bill requires the attorney general or county attorney  
6 to notify United States immigration and customs enforcement,  
7 the local law enforcement agency, and, if the attorney general  
8 is the one investigating, the county attorney of a complaint  
9 that is not false and frivolous. The bill requires the county  
10 attorney to bring an action in district court against an  
11 employer for a violation in the county where the unauthorized  
12 alien employee is or was employed by the employer. The bill  
13 provides that such an action must be expedited by the court.

14 The bill provides that for a first violation, the court  
15 must order the employer to terminate the employment of all  
16 unauthorized aliens and to submit a signed sworn affidavit  
17 to that effect or face suspension of business licenses by  
18 appropriate agencies. The court will also order a three-year  
19 probationary period for a knowing violation or a five-year  
20 probationary period for an intentional violation by an  
21 employer. For a knowing violation, the court may also  
22 order the suspension of the employer's business licenses  
23 by appropriate agencies for up to 10 business days, after  
24 considering certain factors. For an intentional violation,  
25 the court must order the suspension of the employer's business  
26 licenses by appropriate agencies for at least 10 business days,  
27 after considering certain factors. The bill provides that for  
28 a second violation, defined as a violation occurring during a  
29 probationary period for a previous violation, the court must  
30 order the permanent revocation of the employer's business  
31 licenses. The bill directs the attorney general to maintain an  
32 online database of first-time offenders.

33 The bill provides that the district court can only consider  
34 a determination by the federal government in determining the  
35 immigration status of an alleged unauthorized alien employed by

1 an employer. The bill provides that a determination of lawful  
2 status by the federal government will create a rebuttable  
3 presumption of the employee's lawful status, as well as a  
4 rebuttable presumption that an employer did not knowingly or  
5 intentionally employ an unauthorized alien. The bill provides  
6 that an employer who establishes that the employer complied in  
7 good faith with 8 U.S.C. § 1324a(b) establishes an affirmative  
8 defense that the employer did not knowingly or intentionally  
9 employ an unauthorized alien. The bill provides that an  
10 employer is considered to have complied with the requirements  
11 of 8 U.S.C. § 1324a(b), notwithstanding an isolated, sporadic,  
12 or accidental technical or procedural failure to meet the  
13 requirements, if there is a good faith attempt to comply with  
14 the requirements. The bill provides an employer with an  
15 affirmative defense of entrapment if certain elements are met.

16 The bill requires an employer hiring a new employee to  
17 verify the employee's employment eligibility through the  
18 federal e-verify program. The bill requires the employer  
19 to keep records of the verification for the duration of the  
20 employee's employment or three years, whichever is longer. The  
21 bill requires an employer receiving an economic development  
22 incentive from a state government entity to register with the  
23 federal e-verify program. The bill provides that an employer  
24 who does not comply with the requirement must repay all moneys  
25 received for the economic development incentive. The bill  
26 provides an employer the right to appeal a determination of  
27 noncompliance, and does not require repayment until a final  
28 determination of noncompliance is made. The bill directs the  
29 attorney general to request from the United States department  
30 of homeland security a list of employers registered with the  
31 e-verify program every three months. The bill directs the  
32 attorney general to make the list available on the attorney  
33 general's internet site.

34 IMMOBILIZATION OR IMPOUNDMENT OF VEHICLES. The bill  
35 requires a peace officer to immobilize or impound a vehicle if

1 the officer determines that the driver, in furtherance of the  
2 illegal presence of an alien in the United States and while  
3 violating another criminal offense, is transporting or moving  
4 or attempting to transport or move an alien in the vehicle if  
5 the person knows or recklessly disregards the fact that the  
6 alien has come to, has entered, or remains in the United States  
7 illegally. The bill requires a peace officer to immobilize or  
8 impound a vehicle if the officer determines that the driver is  
9 concealing, harboring, or shielding or attempting to conceal,  
10 harbor, or shield from detection an alien in the vehicle if  
11 the person knows or recklessly disregards the fact that the  
12 alien has come to, entered, or remains in the United States  
13 illegally. The bill provides definitions.

14     TRAFFICKING. The bill creates the offense of trafficking  
15 and provides definitions. The bill provides that this  
16 offense is an aggravated misdemeanor, which is punishable by  
17 confinement for no more than two years and a fine of at least  
18 \$625 but not more than \$6,250. Under certain circumstances,  
19 the penalty is instead a class "C" felony, which is punishable  
20 by confinement for no more than 10 years and a fine of at least  
21 \$1,000 but not more than \$10,000, or a class "D" felony, which  
22 is punishable by confinement for no more than five years and  
23 a fine of at least \$750 but not more than \$7,500. A person  
24 charged with a class "D" felony under this law is ineligible  
25 for suspension of sentence, probation, pardon, commutation  
26 of sentence, or release from confinement on any basis, with  
27 certain exceptions. The bill authorizes peace officers, in the  
28 enforcement of the trafficking law, to lawfully stop a person  
29 if they have reasonable suspicion to believe the person is in  
30 violation of a civil traffic law.

31     The bill strikes redundant language in the Code chapter  
32 relating to fraudulent documents regarding the employment of  
33 unlawful aliens.

34     FAILURE TO COMPLETE OR CARRY ALIEN REGISTRATION  
35 DOCUMENTATION. The bill creates the offense of failing to



1 complete or carry alien identification documentation. The  
2 bill provides that in addition to any violation of federal  
3 law, a person is guilty of willful failure to complete or  
4 carry an alien registration document if the person is in  
5 violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a). The  
6 bill specifies which governmental entities may determine an  
7 alien's immigration status. The bill removes eligibility of a  
8 person convicted of the new offense for suspension of sentence,  
9 probation, pardon, commutation of sentence, or release from  
10 confinement on any basis, with certain exceptions. The bill  
11 provides for a fine. The bill provides that a record that  
12 relates to the immigration status of a person is admissible in  
13 any court without further foundation or testimony if the record  
14 is certified as authentic by the government agency that is  
15 responsible for maintaining the record. The bill provides that  
16 this offense is a serious misdemeanor, which has a penalty of  
17 confinement for no more than one year. The bill provides that  
18 under certain circumstances, the penalty is instead a class "D"  
19 felony, which is punishable by confinement for no more than  
20 five years, or an aggravated misdemeanor, which is punishable  
21 by confinement for no more than two years. The bill provides  
22 for a fine of up to \$500 for a first offense and up to \$1,000  
23 for a subsequent violation.

24     HIRING AND TRANSPORTATION OF UNLAWFUL ALIENS. The bill  
25 provides that it is a serious misdemeanor for an occupant of a  
26 motor vehicle that is stopped on a street, roadway, or highway  
27 to attempt to hire or hire and pick up passengers for work if  
28 the motor vehicle blocks or impedes traffic. The bill provides  
29 that it is a serious misdemeanor for a person to enter a motor  
30 vehicle stopped on a street, roadway, or highway in order to be  
31 hired by an occupant of the motor vehicle and to be transported  
32 to work if the motor vehicle blocks or impedes traffic. The  
33 bill provides that it is a serious misdemeanor for a person  
34 who is unlawfully present in the United States and who is an  
35 unauthorized alien to knowingly apply for work, solicit work in

1 a public place, or perform work as an employee or independent  
2 contractor. A serious misdemeanor is punishable by confinement  
3 for no more than one year and a fine of at least \$315 but not  
4 more than \$1,875. The bill provides definitions.

5 The bill provides that it is unlawful for a person who is  
6 in violation of a criminal offense to transport or move an  
7 alien in a means of transportation, or attempt to do so, if the  
8 person knows or recklessly disregards the fact that the alien  
9 is in the United States unlawfully. The bill provides that  
10 it is unlawful for a person who is in violation of a criminal  
11 offense to conceal, harbor, or shield an alien from detection  
12 in any place in this state, or attempt to do so, if the person  
13 knows or recklessly disregards the fact that the alien is in  
14 the United States unlawfully. The bill provides that it is  
15 unlawful for a person who is in violation of a criminal offense  
16 to encourage or induce an alien to enter or reside in the state  
17 of Iowa if the person knows or recklessly disregards the fact  
18 that the alien entering or residing in this state is or will  
19 be in violation of law. The bill provides that a means of  
20 transportation used in the commission of these offenses is  
21 subject to mandatory vehicle immobilization or impoundment.  
22 The bill provides for definitions and certain exceptions. The  
23 bill provides that these offenses are serious misdemeanors,  
24 which are punishable by confinement for no more than one year  
25 and a fine of at least \$315 but not more than \$1,875. However,  
26 a violation that involves 10 or more unlawful aliens is an  
27 aggravated misdemeanor, which will be punishable by confinement  
28 for no more than two years and a fine of at least \$1,000 for  
29 each alien who is involved.

30 ARREST OF REMOVABLE PERSONS. The bill authorizes a peace  
31 officer to arrest a person without a warrant if the officer  
32 has probable cause to believe that the person has committed a  
33 public offense that makes the person removable from the United  
34 States.

35 ENFORCEMENT OF IMMIGRATION LAWS. The bill creates Code

1 chapter 823, relating to enforcement of immigration laws.  
2 The bill prohibits officials and agencies of this state or  
3 its political subdivisions from restricting or limiting the  
4 enforcement of the federal immigration laws to less than the  
5 full extent permitted by federal law. The bill requires law  
6 enforcement officials and law enforcement agencies of this  
7 state or its political subdivisions to reasonably attempt to  
8 determine the immigration status of a person involved in a  
9 lawful contact where reasonable suspicion exists regarding the  
10 immigration status of the person, except if the determination  
11 may hinder or obstruct an investigation. The bill requires  
12 that if the person is arrested, the person's immigration status  
13 must be determined before the person is released and must be  
14 verified with the federal government. The bill stipulates  
15 that a law enforcement official or agency cannot solely  
16 consider race, color, or national origin when implementing  
17 these provisions, except as permitted by the United States  
18 or Iowa constitution. The bill specifies that a person is  
19 presumed to be lawfully present if the person provides certain  
20 documentation. The bill provides that if a person is convicted  
21 of a violation of a state or local law, on discharge from  
22 imprisonment or on the assessment of any monetary obligation  
23 imposed, the United States immigration and customs enforcement  
24 or the United States customs and border protection must be  
25 immediately notified. The bill authorizes a law enforcement  
26 agency to securely transport an unlawfully present alien to  
27 a federal facility. The bill prohibits, except as provided  
28 in federal law, officials and agencies of this state and its  
29 political subdivisions from being prevented or restricted from  
30 sending, receiving, or maintaining information relating to  
31 the immigration status of an individual or exchanging that  
32 information with another governmental entity for certain  
33 official purposes.

34 The bill allows a person who is a legal resident of this  
35 state to bring an action in district court to challenge

1 officials and agencies of the state and its political  
2 subdivisions that adopt or implement a policy that limits or  
3 restricts the enforcement of federal immigration laws to less  
4 than the full extent permitted by federal law, and provides for  
5 a civil penalty. The bill provides for indemnification of law  
6 enforcement officers against actions brought under Code chapter  
7 823, except if the officer has been adjudged to have acted in  
8 bad faith. The bill stipulates that Code chapter 823 is to be  
9 implemented consistent with federal immigration law protecting  
10 the civil rights of all persons and respecting the privileges  
11 and immunities of United States citizens.

12     IMPLEMENTATION OF ACT. The bill provides that the bill  
13 must be implemented in a manner consistent with federal laws  
14 regulating immigration, protecting the civil rights of all  
15 persons, and respecting the privileges and immunities of United  
16 States citizens.

17     The bill may include a state mandate as defined in Code  
18 section 25B.3. The bill makes inapplicable Code section 25B.2,  
19 subsection 3, which would relieve a political subdivision from  
20 complying with a state mandate if funding for the cost of  
21 the state mandate is not provided or specified. Therefore,  
22 political subdivisions are required to comply with any state  
23 mandate included in the bill.